

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

JONATHAN ROBERT KRESS

Appellant

No. 1254 MDA 2013

Appeal from the PCRA Order of June 17, 2013  
In the Court of Common Pleas of Lycoming County  
Criminal Division at Nos.: CP-41-CR-0001279-2008  
CP-41-CR-0001990-2008

BEFORE: DONOHUE, J., WECHT, J., and STRASSBURGER, J.\*

MEMORANDUM BY WECHT, J.:

**FILED JULY 01, 2014**

Jonathan Kress appeals the June 17, 2013 order dismissing his petition for relief pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-46. We affirm.

On December 4, 2008, Kress pleaded guilty to one count each of involuntary deviate sexual intercourse and sexual abuse of children.<sup>1</sup> On direct appeal, a panel of this Court summarized the factual basis for Kress' guilty pleas as follows:

On July 11, 2008, [Kress] invited the fourteen (14) year[-]old victim over to [Kress'] apartment to play video games and watch movies. [Kress] and the victim were neighbors, and [Kress]

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. §§ 3123 and 6312, respectively.

frequently invited the victim to [Kress'] apartment to participate in these activities. On this particular occasion, [Kress] asked the victim to watch [] pornography and instructed him to undress. [Kress] rubbed the victim all over his body, including his genitals. On two subsequent occasions, [Kress] engaged in anal intercourse with the victim and performed oral sex on him. The police seized [Kress'] computer following his arrest and retrieved over nine thousand (9000) digital images depicting children engaged in sexual acts. The age range of the children in the images was between two (2) and fifteen (15) years old.

**Commonwealth v. Kress**, No. 813 MDA 2009, slip op. at 1-2 (Pa. Super. March 16, 2010).

On April 29, 2009, Kress was sentenced to ten to twenty years' incarceration, and a consecutive seven-year term of probation. After an evaluation, Kress also was designated to be a sexually violent predator ("SVP") pursuant to the applicable version of Megan's Law in effect at the time of Kress' crimes. We affirmed the judgment of sentence and the SVP designation on direct appeal. **Id.** at 1, 8. Thereafter, Kress filed a timely petition for allowance of appeal with the Pennsylvania Supreme Court, which was denied on October 4, 2011. **Commonwealth v. Kress**, 29 A.3d 372 (Pa. 2011) (*per curiam*).

On December 6, 2012, Kress filed a timely *pro se* PCRA petition.<sup>2</sup> On December 13, 2012, the PCRA court appointed counsel to represent Kress

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<sup>2</sup> To be timely, a PCRA petition must be filed within one year of the date that a judgment of sentence becomes final. 42 Pa.C.S. § 9545(b)(1). A judgment of sentence becomes final "at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking (*Footnote Continued Next Page*)

during the PCRA proceedings. On February 11, 2013, appointed counsel filed a petition to withdraw as counsel pursuant to the dictates of **Turner/Finley**.<sup>3</sup> On April 16, 2013, the PCRA court issued an opinion and order, in which the court concluded, as did appointed counsel, that Kress' PCRA petition lacked merit. The court issued a separate order granting counsel's motion to withdraw, and notifying Kress of the court's intention to dismiss the PCRA petition without a hearing pursuant to Pa.R.Crim.P. 907(1). On June 17, 2013, the PCRA court dismissed Kress' petition.

On July 9, 2013, Kress filed a *pro se* notice of appeal. On August 20, 2013, this Court entered an order directing the PCRA court to appoint counsel to represent Kress on appeal, because a PCRA petitioner is entitled to counsel on a first PCRA petition. On August 29, 2013, the PCRA court entered an order clarifying for this Court that Kress already had been appointed an attorney, but that attorney withdrew pursuant to **Turner/Finley**. As such, Kress no longer was entitled to court-appointed

(Footnote Continued) \_\_\_\_\_

the review." **Id.** § 9545(b)(3). Instantly, Kress' petition for allowance of appeal was denied on October 4, 2011. Kress had ninety days from that date to file a petition for a writ of *certiorari* with the United States Supreme Court. **See** U.S. Sup.Ct. Rule 13. Hence, Kress' judgment of sentence became final on or about January 2, 2012. To be timely, Kress had to file a PCRA petition within one year of that date. Kress filed his petition on December 6, 2012, well within that time limit. Therefore, Kress' petition was timely filed.

<sup>3</sup> **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988).

counsel. Nonetheless, the PCRA court complied with this Court's August 20, 2013 order and appointed a second attorney to represent Kress. On September 20, 2013, upon consideration of the PCRA court's explanation, this Court vacated its earlier order requiring the PCRA court to appoint counsel.

The PCRA court did not direct Kress to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Accordingly, Kress did not file a concise statement. Nonetheless, on November 14, 2013, the PCRA court issued an opinion pursuant to Pa.R.A.P. 1925(a), wherein the court adopted its rationale for dismissing Kress' PCRA petition that it set forth in its April 16, 2013 opinion and order.

Presently, Kress raises the following issues for our consideration:

1. Does the Pennsylvania Constitution afford the Court of Common Pleas the right to, the legislature, the right to, or any other entity the right to prosecute [Kress] for said "crimes"?
2. Did judicial misconduct exist, and if so, does it warrant a new trial, a dismissal of the case, or other relief?
3. Did the Court of Common Pleas, and the Hon. Butts' ruling to grant the Commonwealth's Motion for Disposition of Evidence lack jurisdiction and did it prejudice [Kress]?
4. [Were] the facts of the case misrepresented and was a valid defense presented at [the] Guilty Plea Stage, thereby invalidating the plea due to making it unintelligent?
5. Did the Court of Common Pleas [err] in not allowing [Kress] the right to amend/supplement his petition (PCRA)?

6. Was there enough evidence of Ineffective Assistance of Counsel to render Attorney Roger Laguna's representation equate [*sic*] to a prejudice of [Kress]?
7. Did a manifest injustice occur in relation to [Kress'] guilty plea?
8. Were [Kress'] Due Process rights violated?
9. Did a conflict of interest or prejudice exist with Attorney Donald Martino?
10. Does the Sexual Abuse of Children Statute violate the constitution, and should it be repealed?-- [Kress] understands this question is one for the Supreme Court but is preserving it in this petition.
11. Was there a lack of subject matter jurisdiction in the charging and convicting of [Kress]?
12. Is the charging of crimes again on a new docket illegal?
13. Was [Kress'] guilty plea truly entered knowingly, voluntarily, and intelligently?
14. Do the mandatory minimum statutes, of which [Kress] was sentenced under violate the PA or US Constitution[s]?
15. Was [Kress] charged with valid laws and convicted appropriately under such laws?
16. Did the actions of the Williamsport Police department cause [Kress] to be prejudiced, and if so, is it reversible error or does it require action to be taken?
17. Are the errors on the criminal Informations that were filed wrot [*sic*] with enough errors to cause them to be inadmissible, and/or unenforceable. Additionally do they violate [Kress'] Constitutional rights?

Brief for Kress at 1-3 (unpaginated).

Our review of an order granting or denying PCRA relief is limited to ascertaining whether the record supports the determination of the PCRA court and whether the ruling is free of legal error. ***Commonwealth v.***

**Johnson**, 966 A.2d 523, 532 (Pa. 2009). Where the record supports a post-conviction court's credibility determination, we are bound by that determination. **Commonwealth v. Knighten**, 742 A.2d 679, 682 (Pa. Super. 1999).

Although Kress lists seventeen issues for our review, his brief only addresses the first six listed issues. Kress provides no merits-based discussion whatsoever relevant to issues seven through seventeen. Thus, those issues are waived. **See** Pa.R.A.P. 2119(a) ("The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part--in distinctive type or in type distinctively displayed--the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.").<sup>4</sup>

We next turn to Kress' listed issues two through five. In his brief, Kress comingles some of these issues and provides only passing reference to others. Nonetheless, each issue is addressed in some form, although rambling and incoherent at times. However, Kress does not support any of

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<sup>4</sup> In his brief, Kress notes that he ran out of time to adequately prepare his brief on these issues, and requests that we grant him the right to supplement his brief with discussion of those issues. We decline the request. Although we recognize that prisons do not provide the ideal environment for the satisfactory construction of an appellate brief, the proper remedy for seeking more time to complete a brief is a motion for an extension of time. Kress could have, and should have, filed for an extension of time if he did not have sufficient time to complete his brief. Because he did not, we will not grant his request for more time to brief his issues at this juncture.

these arguments with citations to applicable and binding case law in violation of Rule 2119(a). The failure to support an argument with such authorities results in waiver of that claim. **Commonwealth v. Antidormi**, 84 A.3d 736, 754 (Pa. Super. 2014). Kress' present failures preclude us from meaningfully addressing his claims, and necessarily produce the type of undeveloped argument that must result in waiver. Hence, "as [Kress] has cited no legal authorities nor developed any meaningful analysis, we find [these issues] waived for lack of development." **Commonwealth v. McLaurin**, 45 A.3d 1131, 1139 (Pa. Super. 2012) (citing **Commonwealth v. Johnson**, 985 A.2d 915, 924 (Pa. 2009)); Pa.R.A.P. 2119(a).

What remains are issues one and six. In issue one, Kress' primary contention is that "the courts at no stage had subject matter jurisdiction and therefore no statutory authority to hear the case." Brief for Kress at 9 (unpaginated). We disagree.

Recently, in **Commonwealth v. Elia**, 83 A.3d 254, 265 (Pa. Super. 2013), we explained the subject matter jurisdiction possessed by the courts of common pleas over crimes committed in this Commonwealth:

[I]n **Commonwealth v. Seiders**, 11 A.3d 495 (Pa. Super. 2010), we set forth the following governing standards pertaining to a trial court's subject matter jurisdiction in a criminal case:

Subject matter jurisdiction speaks to the competency of a court to hear and adjudicate the type of controversy presented. **Commonwealth v. Bethea**, 828 A.2d 1066, 1074 (Pa. 2003). Jurisdiction is purely a question of law; the appellate standard of review is *de novo* and the scope of review is plenary. **Commonwealth v. John**, 854 A.2d 591, 593 (Pa. Super. 2004). . . . Controversies stemming

from violations of the Crimes Code are entrusted to the original jurisdiction of the courts of common pleas for resolution. **Bethea**, 828 A.2d at 1074; 18 Pa.C.S. § 102. All jurists within that tier of the unified judicial system are competent to hear and resolve a matter arising out of the Crimes Code. **Bethea**, 828 A.2d at 1074; Pa. Const. Art. 5, § 5 (establishing the jurisdiction of the courts of common pleas within the unified judicial system); 42 Pa.C.S. § 931(a) (defining the unlimited original jurisdiction of the courts of common pleas).

While each court of common pleas in this state possesses the same subject matter jurisdiction to decide cases arising under the Crimes Code, that “jurisdiction should only be exercised beyond the territorial boundaries of the judicial district in which it sits in the most limited of circumstances.” **Bethea**, 828 A.2d at 1074.

The law is clear that the locus of a crime is always in issue, for the court has no jurisdiction [over] the offense unless it occurred within the county of trial, or unless, by some statute, it need not[.] For a county to take jurisdiction over a criminal case, some overt act involved in that crime must have occurred within that county. In order to base jurisdiction on an overt act, the act must have been essential to the crime, an act which is merely incidental to the crime is not sufficient.

**Commonwealth v. Boyle**, 532 A.2d 306, 309-10 (Pa. 1987).

**Seiders**, 11 A.3d at 496-97 (footnote omitted; some citations modified).

**Elia**, 83 A.3d at 265 (citations modified). Instantly, Kress’ actions constituted crimes under our Crimes Code, and occurred within the boundaries of Lycoming County. Thus, the trial court had subject matter jurisdiction to hear and dispose of Kress’ case. This issue necessarily fails.



In issue six, Kress argues that his trial counsel was ineffective for failing to gather “exculpatory evidence,” which, if located, would have induced Kress to elect to proceed with a trial instead of pleading guilty. Kress does not specify the “exculpatory evidence” to which he initially refers, except for the implication that some evidence may have existed to demonstrate that he did not know that his victim was fourteen years old and that mistake of age may have been a potential defense to the crimes to which he pleaded guilty. Among other things, Kress identifies other instances of alleged ineffectiveness as follows:

[Trial counsel] did not argue the change in terms of the preliminary waiver (from supervised bail to intensive supervised), (from can move to Mifflin County with parents, to must stay in Lycoming), refused to present requests on appeal (noted in Superior Court Docketing Statement he filed) – violation [of] rules of Prof. Cond. 1.2a, did not provide [Kress] with legal documents, refused to gather exculpatory evidence, coached [Kress] on what “they want” on several of the answers to the guilty plea form, misrepresented the law in regard to mistake of age, allowed [Kress] to plead guilty when he had informed him that he believed [the] “victim” to be over [the] critical age. [Counsel] did not pursue conflict of interest/prejudice with the [assistant district attorney] (was the defense attorney, and lost in a case where I was the victim.)—forget the citation, but the Williamsport Sun Gazette was on the prosecution side of things. [Counsel] made no attempt to gather the cell phone data, the video showing the illegal entry into [Kress’] apartment, the Facebook information showing “victim” as 18, [counsel] did not subpoena [the victim’s] laptop to show is over sixty porn websites he was frequenting of male and female actors that he had visited prior to the alleged events. [Counsel] failed to do any investigation and provided practically no representation, let alone adequate representation.

Brief for Kress at 13 (unpaginated).

The principles governing claims of ineffective assistance of counsel are well-settled.

In Pennsylvania, counsel is presumed effective, and a defendant bears the burden of proving otherwise. In order to be entitled to relief on a claim of ineffective assistance of counsel, the PCRA petitioner must plead and prove by a preponderance of the evidence that (1) the underlying claim has arguable merit; (2) counsel whose effectiveness is at issue did not have a reasonable basis for his action or inaction; and (3) the PCRA petitioner suffered prejudice as a result of counsel's action or inaction. When determining whether counsel's actions or omissions were reasonable, we do not question whether there were other more logical course of actions which counsel could have pursued: rather, we must examine whether counsel's decisions had any reasonable basis. Further, to establish prejudice, a petitioner must demonstrate that but for the act or omission in question, the outcome of the proceedings would have been different. Where it is clear that a petitioner has failed to meet any of the three, distinct prongs . . . , the claim may be disposed of on that basis alone, without a determination of whether the other two prongs have been met.

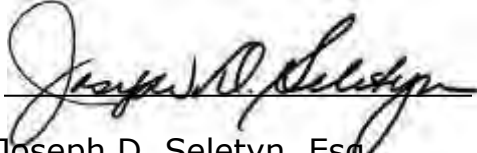
***Commonwealth v. Steele***, 961 A.2d 786, 796-97 (Pa. 2008) (citations and internal quotation marks omitted); ***see Commonwealth v. Pierce***, 527 A.2d 973, 975 (Pa. 1987). "In accord with these well-established criteria for review, a petitioner must set forth and individually discuss substantively each prong of the ***Pierce*** test." ***Steele***, 961 A.2d at 797 (citations omitted).

Kress makes no meaningful attempt to address each of the three prongs of the ***Pierce*** test. Kress sets forth only the laundry list of claims that we set forth above, but does not discuss each individually in terms of whether the claims have arguable merit under our current laws. Moreover, with regard to the reasonable basis prong, Kress avers only that "[t]here can

be [no] reasonable basis designed to effectuate [Kress'] interests." Brief for Kress at 13. Such undeveloped claims and bald assertions fall well short of satisfying a PCRA petitioner's burden to demonstrate that counsel was ineffective. **See Commonwealth v. Chmiel**, 30 A.3d 1111, 1128 (Pa. 2011). Consequently, Kress' ineffective assistance of counsel claim(s) fail.

Order affirmed.<sup>5</sup>

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/1/2014

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<sup>5</sup> Kress has filed two documents with this Court. The first is a motion, entitled a "Motion for Clarification," which was denied by an October 18, 2013 order from this Court. In our order, we noted that we were denying the petition without prejudice to re-raise his concerns in his brief. As was the case when we originally entered the order, it is difficult to discern what relief Kress actually was seeking in the motion.

Kress' second filing is in the form of a letter that appears to be an attempt by Kress to provide additional background on this case, including his understanding of the relationship that he had with the victim and his understanding of the law at the time of his offenses. Kress appears to make no specific request for relief, other than to request that we reconsider his "Motion for Clarification." Because we denied that motion without prejudice to pursue relief from this panel, we grant his request to reconsider his "Motion for Clarification."

In his "Motion for Clarification," from what we can decipher, Kress presents to this Court a litany of questions that he believes remain unanswered in his case. Many of the questions pertain to the earlier procedural history of the case and the motions and request that were denied by the trial court. Although presented as a "Motion for Clarification," it is clear that Kress seeks review of multiple legal issues that have arisen in his case. We may only address the legal issues that are preserved and presented to this Court, and those that fall within the purview of the PCRA. We cannot sidestep these basic requirements, and address substantive legal issues, under the guise of "clarification." Consequently, we deny Kress' "Motion for Clarification."